MICHIGAN PORK PRODUCERS ASSOCIATION

September 17, 2015

Dear Michigan Senate:

It is time for Congress to act once and for all to remove the threat of $3.2 billion in retaliation by Canada and Mexico against U.S. exports. The damage we will suffer in lost trade and jobs resulting from such retaliation is a price too high to experiment with any action short of full repeal the Country-of-Origin Labeling (COOL) law. We therefore urge you to support Senate Resolution No. 87 that urges the United States Senate to concur with the United State House of Representatives and repeal the country-of-origin labeling requirements and allow us to maintain our ability to export to these critically important markets.

Efforts to replace COOL with a legislated voluntary COOL program appear founded on the mistaken belief that such action will lead to a reevaluation of rulings against COOL by a World Trade Organization (WTO) arbitration panel, or will convince Canada and Mexico to abandon their complaints (after seven years of challenges and four rulings in their favor). Both countries have made it perfectly clear that such a "voluntary" program would be unacceptable and, if enacted, would not dissuade them from implementing retaliation at a level to be authorized by a WTO arbitration panel.

It is too late for the COOL law to be tweaked in the vain hope that the WTO arbitration panel might be persuaded to reconsider prior WTO rulings and the recent authorization to retaliate by the WTO Dispute Settlement Body. Whether or not a country is complying with WTO rulings is determined by a compliance panel, not the arbitration panel, and a compliance panel ruling against the U.S. has already been made and upheld by the WTO's Dispute Settlement Body. The role of the arbitration panel is solely to determine the appropriate level of retaliation. There is no authority or precedent that would allow that panel to do anything else.

An argument has been proffered that years ago an arbitration panel had in fact inserted itself into the compliance question in a case against the European Union on banana tariffs. But this case involved substantially different circumstances and cannot be used as a precedent in the COOL case. Furthermore, in a separate case, the WTO Appellate Body quashed the notion that an arbitration panel may carry out any assessment of compliance, by ruling that such action is outside an arbitration panel's terms of reference and declaring that it has "no legal effect."

In short, whether or not there will be retaliation against U.S. exports in this case will be determined by Canada and Mexico – or preferably by the U.S. Congress. If Congress chooses a "Hail Mary" course by enacting a voluntary COOL bill and Canada and Mexico proceed with retaliation, as is almost certain, the only way our exports could then get out from under that retaliation would be to challenge it in a separate action at the WTO. This could take 18 months

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or more to adjudicate and, in the meantime, we would be losing export sales. Worse, since the voluntary bill currently being considered suffers from exactly the same problem as the current COOL legislation – it forces segregation of imported livestock to permit the use the "voluntary" label – we would likely lose again and we would be back to where we are today – except much poorer.

Because the damage to U.S. exports will be multiplied across our economy, the economic effect will greatly exceed whatever retaliation is ultimately authorized by the WTO and will hurt many Americans that had nothing to do with implementing the COOL law. Not only will innocent bystanders be harmed, the economy as a whole will suffer. Professor Dermot Hayes of Iowa State University calculates that the effect of $3 billion in retaliation would be 25,500 lost U.S. jobs.

With the WTO ruling on retaliation levels looming, we support Senate Resolution No. 87 to repeal country of origin labeling requirements for pork, beef and poultry at the earliest possible opportunity.

- Submitted on behalf of the Michigan Pork Producers Association